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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAR 26 2010

MSC-03-211-60493

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the director of the Los Angeles office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act because he has been convicted of three or more misdemeanors. *See Section 1104(c)(2)(D)(ii) of the LIFE Act.* The director concluded that the applicant's convictions precluded his adjustment to permanent resident status under the LIFE Act. *See* 8 C.F.R. § 245a.11(d)(1).

On appeal, counsel for the applicant asserts that the applicant has not been convicted of three or more misdemeanors and, therefore, that the applicant's criminal record does not disqualify him for adjustment to permanent resident status under the LIFE Act.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act; 8 U.S.C. § 1101(a)(48)(A).

Additionally, an applicant who has been convicted of a crime involving moral turpitude (CIMT) is inadmissible, and therefore ineligible for permanent resident status. But, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception. *See* 8 U.S.C. § 1182(a)(2)(A)(ii). A CIMT will meet the petty offense exception if "'the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months.'" *Lafarga v. INS*, 170 F.3d 1213, 1214-15 (9th Cir. 1999) (quoting 8 U.S.C. § 1182(a)(2)(A)(ii)(II)); *see also Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 843-46 (9th Cir. 2003). For the purpose of the petty offense exception, "'the maximum penalty possible' . . . refers to the statutory maximum sentence, not the guideline sentence to which the alien is exposed." *Mendez-Mendez v. Mukasey*, 525 F.3d 828, 835 (9th Cir. 2008) (offense of bribery of a public official did not qualify for petty offense exception where statutory maximum for offense was 15 years).

The record contains documents that reflect the applicant's criminal history as follows:

- On April 23, 1987, the applicant was charged with violating section 11377(A) of the California Penal Code (PC), *possession controlled substance*, and section 11550 (PC), *use/under influence controlled substance.* On June 18, 1987, the proceedings were suspended and the applicant was placed in a drug diversion program. On February 5, 1988, upon the applicant's completion of the program, diversion was successfully terminated. (Judicial District Court of Lamont, [redacted]

- On August 14, 1992, the applicant was charged with violating section 23152(B) of the California Vehicle Code (VC), *.08% more wght alcohol drive veh.*, and section 23152(A) (VC), *under the influence of alcohol/drug in vehicle.* On September 25, 1992, the applicant was convicted of both charges, both misdemeanors (West Orange County Municipal Judicial District, [redacted]

- On August 12, 1993, the applicant was charged with violating section 23152(A) (VC), *under the influence of alcohol/drug in vehicle*, section 23152(B) (VC), *.08% more wght alcohol drive veh.*, and section 14601.1(A) (VC), *driving with suspended license.* On September 9, 1993, the applicant was also charged with violating section 12500(A) (VC), *unlicensed driver.* On September 8, 1993, the applicant pled guilty to counts one and four, both misdemeanors, and the remaining counts were dismissed (Municipal Court of Whittier Judicial District, County of Los Angeles, [redacted]

- On May 26, 1997, the applicant was charged with violating section 23152 (A) (VC), *under the influence of alcohol/drug in vehicle*, section 23152(B) (VC), *.08% more wght alcohol drive veh.*, and section 16028(A) (VC), *no proof of car insurance*. On November 6, 1997, the applicant pleaded *nolo contendere* to count two, a misdemeanor, and the remaining counts were dismissed (Municipal Court of Whittier Judicial District, County of Los Angeles, [redacted]

- On December 17, 1999, the applicant was charged with violating section 14601.2(A) (VC), *driving with suspended license*, a misdemeanor, section 22101(D) (VC), *fail to obey sign*, an infraction, and 16028(A) (VC), *no proof of car insurance*, an infraction. On January 27, 2000, the applicant pleaded *nolo contendere* to counts one and three, and the remaining count was dismissed. (Municipal Court of Downey Judicial District, County of Los Angeles, [redacted]

Because of the applicant's six misdemeanor convictions, the applicant is ineligible for adjustment to permanent resident status. There is no waiver available to an applicant convicted of three or more misdemeanors committed in the United States.

In addition, in a decision dated September 3, 2003, the Board of Immigration Appeals (BIA) found that the applicant's 1993 conviction, for *driving under the influence of alcohol/drug* in violation of section 23152 (VC), with an accompanying conviction for *driving without a valid license*, was a crime involving moral turpitude (CIMT), pursuant to *Matter of* Lopez, 22 I&N Dec. 1188 (BIA

1999)(holding that driving while under the influence when the driver knows he is prohibited from driving under any circumstances is a crime involving moral turpitude.) In addition, the BIA further found that none of the applicant's other convictions appears to be for a crime involving moral turpitude. *See Matter of Torres-Varela,* 23 I&N Dec. 78 (BIA 2001)(holding that driving while under the influence with two or more prior convictions for such conduct is not a crime involving moral turpitude). The BIA concluded that the applicant's 1993 conviction falls within the petty offense exception, because the applicant has been convicted of only one crime involving moral turpitude, and because the maximum penalty possible for the crime did not exceed imprisonment for one year, and the applicant was not sentenced to a term of imprisonment in excess of six months. *See* section 212(a)(2)(A)(ii)(II) of the Immigration and Nationality Act (the Act), as amended.

The record reflects that on March 8, 1999, removal proceedings were instituted against the applicant in Los Angeles. On April 3, 2006, the Immigration Judge denied the applicant's request for cancellation of removal, and granted the applicant's application for voluntary removal, with an alternate order of removal should the applicant fail to depart. On February 14, 2008, the BIA dismissed the applicant's appeal and, pursuant to the Immigration Judge's order, permitted the applicant 60 days to voluntarily depart from the United States.

As stated above, an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to lawful permanent resident status. *See* 8 C.F.R. § 245a.18(a)(1).

Thus, the applicant is not eligible to adjust to lawful permanent resident status under the LIFE Act for the reasons stated above.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.